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6 **POLLUTION CONTROL HEARINGS BOARD**
7 **STATE OF WASHINGTON**

8 WASHINGTON AGGREGATES AND
9 CONCRETE ASSOCIATION,

10 and

11 PUGET SOUNDKEEPER
12 ALLIANCE,

13 Appellants,

14 v.

15 STATE OF WASHINGTON,
16 DEPARTMENT OF ECOLOGY,

17 Respondent.

PCHB Nos. 05-016 & 05-017

STIPULATION AND AGREED
ORDER OF DISMISSAL

18 COMES NOW, Appellants Puget Soundkeeper Alliance, by and through its attorneys,
19 Smith & Lowney, and Richard A. Smith; Appellants Washington Aggregates and Concrete
20 Association, by and through its attorneys, Mentor Law Group, PLLC, and James A Tupper Jr.;
21 and Respondent, Department of Ecology ("Ecology") by and through its attorneys, Rob
22 McKenna, Attorney General, and Ronald L. Lavigne, Assistant Attorney General, and agree
23 to the entry of this Stipulation And Order For Dismissal in the form attached.

24 **RECITALS**

25 1. On or about January 5, 2005, Ecology reissued the Sand and Gravel National
26 Pollutant Discharge Elimination and State Waste Discharge General Permit ("the Permit").

2. On or about February 3, 2005, Washington Aggregates and Concrete Association appealed the Permit to the PCHB.

3. On or about February 4, 2005, Puget Soundkeeper Alliance appealed the Permit to the PCHB.

4. By Order dated February 10, 2005, the PCHB consolidated the two appeals.

STIPULATION

1. Within 60 days of the date the PCHB enters the attached Agreed Order of Dismissal, Ecology shall initiate the public comment period to modify the permit in the form attached hereto as Exhibit A, along with a draft Fact Sheet for the Permit. During the modification process, Ecology shall also provide an opportunity for public comment regarding the frequency of pH monitoring in condition S2 of the Permit. The frequency of pH monitoring shall be deemed a permit modification for the purpose of comments on the conditions and the right to appeal the final permit modification.

2. The parties to this appeal specifically reserve their right to comment on the modifications to the Permit during the public comment period, and to appeal the modified Permit.

3. The undersigned parties certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and Agreed Order of Dismissal and legally to bind such party thereto. The parties consent to the submission of this Stipulation and Agreed Order of Dismissal to the Board for approval and entry.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

WASHINGTON AGGREGATES AND
CONCRETE ASSOCIATION

1
2
3 DAVID C. PEELER.
Water Quality Program Manager

By: _____
Its

4 Dated: _____
5

Dated: _____
6

7
8 PUGET SOUNDKEEPER ALLIANCE
9

10 By: _____
Its:

11 DATED: _____
12

13 Approved as to form and content:
14

15 ROB McKENNA
Attorney General
16

MENTOR LAW GROUP PLLC

17 RONALD L. LAVIGNE, WSBA #18550
Assistant Attorney General
18 Attorneys for Ecology

JAMES A. TUPPER JR. WSBA #16873
Attorneys for Washington Aggregates and
Concrete Association

19 DATED: _____
20

DATED: _____
21

22
23 SMITH & LOWNEY PLLC
24

25 RICHARD A. SMITH, WSBA #21788
Attorneys for Puget Soundkeeper Alliance
26

DATED: _____

1 **AGREED ORDER OF DISMISSAL**

2 Having reviewed the foregoing Stipulation and the file and pleadings herein, and it
3 appearing that the parties have reached an agreement;

4 IT IS HEREBY ORDERED that the foregoing Stipulation is entered as an Order of
5 this Board and this case, *Washington Aggregates and Concrete Association and Puget*
6 *Soundkeeper Alliance v. Ecology*, PCHB Nos. 05-016 and 05-017, is hereby DISMISSED
7 without prejudice and without costs or attorneys' fees.

8 Dated this ____ day of _____, 2005.

9 **POLLUTION CONTROL HEARINGS BOARD**

10
11 _____
WILLIAM H. LYNCH, Chair

12
13 _____
BILL CLARKE, Member

14
15 _____
DAVID DANNER, Member

16 **Approved as to form;**
17 **Notice of Presentation waived:**

18 MENTOR LAW GROUP PLLC

SMITH & LOWNEY PLLC

19 _____
20 JAMES A. TUPPER JR. WSBA #16873
Attorneys for Appellant
21 Washington Aggregates and Concrete
Association

RICHARD A. SMITH WSBA #21788
Attorneys for Appellant
Puget Soundkeeper Alliance

22 **Presented by:**

23 ROB McKENNA
24 Attorney General

25
26 _____
RONALD L. LAVIGNE, WSBA #18550
Assistant Attorney General

Attorneys for Respondent
State of Washington
Department of Ecology